

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**E. A. RENFROE & COMPANY, INC.,**

**Respondent,**

**and**

**KIMANI ADAMS,**

**an Individual.**

**Case 10-CA-171072**

**RESPONDENT E. A. RENFROE'S EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S DECISION**

Under Section 102.46 of the National Labor Relations Board's Rules and Regulations, Respondent E. A. Renfroe & Company, Inc. (RENFROE) submits the following Exceptions to Administrative Law Judge Keltner Locke's (the ALJ) August 17, 2016, findings and conclusions (the Order). RENFROE has concurrently filed a brief in support of its exceptions.

**EXCEPTIONS**

1. RENFROE excepts to the ALJ's finding or conclusion "that employees reading the arbitration agreement would believe that 'collective action' referred to any legal action brought by or seeking a remedy for more than one employee." (*Compare* Order at 10–11, *with* Jt. Exs. 2, 3 & 5 at ¶ 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and exceeds the General Counsel's theory of the case.

2. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements created a grievance-arbitration procedure similar to the grievance procedures commonly found in collective-bargaining agreements applicable to "grievances" that do not rise to the level of a legal

cause of action. (*Compare* Order at 11–18, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 17.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

a. RENFROE excepts to the ALJ's finding or conclusion that "the arbitration agreement performed two separate and distinct functions: (1) It established a mechanism for grievance arbitration analogous to the grievance procedures unions and employers commonly negotiate and place in their collective-bargaining agreements. (2) It served as a legal means which the Respondent could use, if sued, to remove the lawsuit from the court and instead submit the issues to an arbitrator for resolution." (*Compare* Order at 13, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 17.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

b. RENFROE excepts to the ALJ's finding or conclusion that "[o]ne type of concerted activity relates to employee participation in the grievance arbitration procedure which the agreement established for the workplace." (*Compare* Order at 13, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 17.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent,

exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

c. RENFROE excepts to the ALJ's finding or conclusion that "typical concerted activity could involve two or more employees filing and presenting a joint grievance to an arbitrator. It also might involve one employee filing a grievance not only on her own behalf but also seeking a remedy for her coworkers." (*Compare* Order at 13, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 17.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

d. RENFROE excepts to the ALJ's finding or conclusion that "the parties make clear that they are establishing a comprehensive grievance resolution procedure." (*Compare* Order at 15, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 17.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

e. RENFROE excepts to the ALJ's finding or conclusion that "Respondent defined [the arbitration agreement's] scope to include all workplace matters. . . . If the Respondent had intended the agreement only to be a device to remove lawsuits from court, it could have used narrower language which reflected that intent. Instead, the

agreement described the parties' intent in broad terms." (*Compare* Order at 15, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 17.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

f. RENFROE excepts to the ALJ's finding or conclusion that the phrase "'that related in any way'—leave[s] little doubt that the parties intended the scope [of the arbitration agreement] to be comprehensive and not limited to matters which would warrant litigation in court." (*Compare* Order at 15, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 17.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

g. RENFROE excepts to the ALJ's finding or conclusion that "[i]f the sole purpose of the arbitration agreement had been to divert lawsuits, the 'Covered Claims' language could have been tailored more narrowly to apply only to those matters for which a cause of action existed." (*Compare* Order at 15–16, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 17.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's

theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

h. RENFROE excepts to the ALJ's finding or conclusion that "the arbitration agreement's broad language indicates that it covers discrimination based on medical and psychological conditions not severe enough to meet the law's definition of 'disability.'" (*Compare* Order at 16, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 17.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

i. RENFROE excepts to the ALJ's finding or conclusion that "[t]he parties' use of the word 'grievances' strongly suggests that they did not intend their agreement to apply only to lawsuits or potential lawsuits in State or Federal court." (*Compare* Order at 16, *with* Order at 10–11; Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 17.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

j. RENFROE excepts to the ALJ's finding or conclusion that "[p]resumably, if the parties had not wished to include workplace grievances, they would have listed 'grievances' among the matters not covered." (*Compare* Order at 16, *with* Jt. Exs. 2, 3 & 5

at ¶¶ 1–5, 17.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

k. RENFROE excepts to the ALJ's finding or conclusion that "it is not necessary to go beyond the four corners of the agreement to conclude that it established a procedure for resolving workplace grievances as well as matters which otherwise would result in a lawsuit. The parties therefore did more than agree to sidetrack lawsuits. They established a grievance arbitration mechanism equivalent to those common in labor relations and typically found in collective-bargaining agreements." (*Compare* Order at 16–17, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 17.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

l. RENFROE excepts to the ALJ's finding or conclusion that any ambiguity in the arbitration agreements regarding the creation of a grievance arbitration procedure should be construed against RENFROE. (*Compare* Order at 16 n.6, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 17; Jt. Ex. 4.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent,

exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

m. RENFROE excepts to the ALJ's finding or conclusion that a grievance arbitration procedure would provide any "unique benefits" or other benefits to RENFROE. (*Compare* Order at 17, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

n. RENFROE excepts to the ALJ's finding or conclusion that the existence of any such "unique benefits" or other benefits "lends support to the finding that the agreement [RENFROE] drafted established such a procedure." (*Compare* Order at 17, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

o. RENFROE excepts to the ALJ's finding or conclusion that "the arbitration agreement creates a mechanism for the routine resolution of workplace issues similar to the grievance arbitration procedures in collective-bargaining agreements." (*Compare* Order at 18, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 17.) The ALJ's finding or conclusion is unsupported by the record evidence, is contrary to the National Labor Relations Act, is based on an unreasonable construction of the arbitration agreements, is contrary to Board

and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

3. RENFROE excepts to the ALJ's finding or conclusion that "the arbitration agreement required the employee to waive the right to engage in concerted activity." (*Compare* Order at 13, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

a. RENFROE excepts to the ALJ's finding or conclusion that "concerted activity could involve two or more employees jointly filing a lawsuit in which they were named as plaintiffs. Concerted activity could also involve an employee filing a lawsuit without any co-plaintiffs but seeking a remedy on behalf of other employees as well as herself. A related form of concerted activity would involve an employee filing a lawsuit and seeking to proceed on a class action basis. . . . The concerted activity also could involve an employee participating as a class member in a class or collective action lawsuit filed by another employee." (*Compare* Order at 13-14, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

4. RENFROE excepts to the ALJ's finding or conclusion that the "complaint refers to both the agreement for home office employees and the agreement for project employees." (*Compare*



Order at 13 n.3, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence and exceeds the General Counsel's theory of the case.

5. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements prohibit the exercise of, interfere with, or require the waiver of any Section 7 right by Kimani Adams or any other RENFROE employee in regards to the purported "grievance arbitration procedure." (*Compare* Order at 18–23, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

a. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements bar the filing of grievances where a grievant seeks a remedy for herself and for fellow workers who are similarly situated but instead requires each employee to file her own grievance. (*Compare* Order at 19–21, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

b. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements interfere with Adams' or other RENFROE employees' rights to act in concert for their mutual aid or protection. (*Compare* Order at 20-21, *with* Jt. Exs. 2, 3 & 5.) The

ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

c. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements create an "inequality of power which Congress sought to eliminate" through the Act. (*Compare* Order at 21, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

d. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements "ostensibly provide[] for arbitration but do[] so in a way which isolates employees from each other." (*Compare* Order at 22, *with* Jt. Exs. 2, 3 & 5.). The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

e. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements create a grievance-arbitration procedure and require "employees to waive the

right to engage in concerted activity through the grievance arbitration process [and] resurrects the inequality of power which existed before the Act's passage." (*Compare* Order at 22, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

f. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements create a grievance-arbitration procedure and that "Section 7 of the Act protects employees' right to file and pursue a joint grievance through the grievance arbitration process." (*Compare* Order at 22, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

g. RENFROE excepts to the ALJ's finding or conclusion that "Section 7 protects an employee's right to file a grievance which seeks a remedy for other employees, and an employee's right to assist another employee in the preparation and presentation of a grievance, to testify on the other employee's behalf, to represent the other employee at the arbitration, and otherwise to participate in the arbitration." (*Compare* Order at 22, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is

based on an unreasonable construction of the arbitration agreements, is contrary to Board and/or court precedent, is contrary to the National Labor Relations Act, is contrary to the Federal Arbitration Act, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

6. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements prohibit the exercise of, interferes with, or requires the waiver of any Section 7 right by Kimani Adams or any other RENFROE employee in regards to the diversion of lawsuits to arbitration. (*Compare* Order at 23–33, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

a. RENFROE excepts to the ALJ's finding or conclusion that this case is governed by a "bedrock principle established in the earliest days of the Act: Two or more employees have the right, when acting together, to file a lawsuit against their employer over an issue concerning terms and conditions of employment." (*See* Order at 24.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

b. RENFROE excepts to the ALJ's misconstruction and misapplication of *Mohave Electric Cooperative, Inc. v. NLRB*, 206 F.3d 1183 (D.C. Cir. 2000); *Le Madri Restaurant*, 331 NLRB 269 (2000); *Host International*, 290 NLRB 442 (1988); *Trinity Trucking & Materials Corp.*, 227 NLRB 792 (1977); *Levinton Manufacturing Co.*, 203

NLRB 309 (1973); *Spandsco Oil & Royalty Co.*, 42 NLRB 942 (1942). (*See* Order at 25–26.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

c. RENFROE excepts to the ALJ's finding or conclusion that "[u]nder the Respondent's arbitration agreement, employees must waive both the right to sue the Respondent and the right to sue the Respondent's client." (*Compare* Order at 25, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the FAA, and exceeds the General Counsel's theory of the case.

d. RENFROE excepts to the ALJ's finding or conclusion that "Section 7 grants employees the right, acting in concert, to file a lawsuit concerning their terms and conditions of employment." (*See* Order at 26.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

e. RENFROE excepts to the ALJ's finding or conclusion that "when two or more employees act together in filing a lawsuit concerning terms or conditions of employment, that action enjoys the protection of the Act unless done in malice or bad faith." (*See* Order at 26.) The ALJ's finding or conclusion is unsupported by the record evidence, is

based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

f. RENFROE excepts to the ALJ's finding or conclusion that its arbitration agreements violate the Act because "when a solitary employee takes some action which is not just for herself but on behalf of other employees as well, that action does constitute protected concerted activity. It is just as much protected concerted activity as when two employees ensemble. Moreover, Section 7 protects the right of one employee to act on behalf of other employees even if they have not given her prior permission to do so." (*See* Order at 26.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

g. RENFROE excepts to the ALJ's findings or conclusions that "Section 7 gives two or more employees, acting together, the right to sue their employer over a work related matter" and that "[b]ecause Section 7 grants them this right to act in concert, an employer cannot lawfully require them to waive it." (*See* Order at 26.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

h. RENFROE excepts to the ALJ's finding or conclusion that "[t]he Respondent's attempt to prevent one employee from representing another goes to the very core of the

rights protected by Section 7 of the Act, the right of employees to look out for each other, to act in concert for their mutual aid or protection." (*Compare* Order at 27, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

i. RENFROE excepts to the ALJ's finding or conclusion that "since Section 7 does protect the right of two or more employees to sue their employer concerning working conditions, and likewise protects the right of one employee to sue if seeking a remedy for other employees besides herself, it certainly would protect the right to take any of the ordinary steps involved in a lawsuit, such as engaging in discovery or seeking class certification. A court certainly may reply, 'sorry, but you don't meet the standards,' but nonetheless, if the employee's complaint relates to terms and conditions of employment, Section 7 protects their right to ask." (*Compare* Order at 28, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and is contrary to the Federal Arbitration Act.

j. RENFROE excepts to the ALJ's finding or conclusion that enforcement of the arbitration agreements would resulting in employees' "right concertedly to file a lawsuit becom[ing] illusory, a hollow shell." (*See* Order at 29.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to

Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

k. RENFROE excepts to the ALJ's finding or conclusion that: "The substantive right, the one which Section 7 protects, is the right of employees, acting in concert to sue their employer about terms and conditions of employment. That right also includes the right of one employee to bring such a lawsuit on behalf of other employees because that, too, constitutes protected concerted activity. The Respondent cannot lawfully require their waiver." (*Compare* Order at 29, with Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and is contrary to the Federal Arbitration Act.

l. RENFROE excepts to the ALJ's finding or conclusion that Section 7 protects employees' "right to take the actions allowed under the court's rules because the court's rules are available to and binding on every party to a lawsuit. An employer lawfully cannot gut the employees' concerted right to file a lawsuit by making them give up the right to use the court's procedures." (*See* Order at 29.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and is contrary to the Federal Arbitration Act.

m. RENFROE excepts to the ALJ's finding or conclusion that "an employee reasonably would understand the term 'collective action' to apply not merely to lawsuits under the Fair Labor Standards Act but to any lawsuit brought by more than one employee or by one employee on behalf of other employees." (*Compare* Order at 29–30,



*with* Jt. Exs. 2, 3 & 5 at ¶ 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and exceeds the General Counsel's theory of the case.

n. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements prohibit two or more employees from filing a lawsuit together in small-claims court or prohibits an employee from filing a lawsuit on behalf of other employees in small-claims court. (*Compare* Order at 30, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 9.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and exceeds the General Counsel's theory of the case.

o. RENFROE excepts to the ALJ's finding or conclusion that "the arbitration agreement unlawfully requires employees to waive the right to engage in concerted activities protected by Section 7 of the Act." (*Compare* Order at 30, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 5, 9.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

p. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements require employees "to waive their right to file any lawsuit at all, even one in which two or more employees act in concert to file the lawsuit, and even one in which one employee files a lawsuit seeking a remedy for other workers." (*Compare* Order at 30,

with Jt. Exs. 2, 3 & 5 at ¶ 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

q. RENFROE excepts to the ALJ's finding or conclusion that "forcing an employee to waive even a reasonably possible Section 7 right violates the Act." (*See* Order at 30.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

r. RENFROE excepts to the ALJ's finding or conclusion that the filing or participation in a class action lawsuit is concerted activity for employees' mutual aid or protection that is protected by Section 7. (*Compare* Order at 31, with Jt. Exs. 2, 3 & 5 at ¶ 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and is contrary to the Federal Arbitration Act.

s. RENFROE excepts to the ALJ's finding or conclusion that an employer cannot require employees to waive the right to participate in a lawsuit proceeding under a court's class-action rules. (*Compare* Order at 31, with Jt. Exs. 2, 3 & 5 at ¶¶ 1–5, 9.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations

Act, is contrary to Board and/or court precedent, and is contrary to the Federal Arbitration Act.

t. RENFROE excepts to the ALJ's finding or conclusion that an objectively reasonable employee would interpret the arbitration agreements as requiring the waiver of a right protected by Section 7 of the Act. (*Compare* Order at 32, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

u. RENFROE excepts to the ALJ's suggested "bright line rule." (*See* Order at 32–33 n.15.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

7. RENFROE excepts to the ALJ's finding or conclusion that "the Respondent's arbitration agreement required the waiver of rights protected by Section 7 of the Act and thereby violated Section 8(a)(1) of the Act." (*Compare* Order at 32, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

8. RENFROE excepts to the ALJ's finding or conclusion that employees could reasonably conclude that the arbitration agreements would preclude them from engaging in conduct

protected by Section 7 of the Act. (*Compare* Order at 33–34, with Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

a. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements create a "grievance" arbitration procedure. (*Compare* Order at 33–34, with Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

b. RENFROE excepts to the ALJ's construction or application of *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011). (*See* Order at 33–34 n.16.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, is contrary to the Federal Arbitration Act, and exceeds the General Counsel's theory of the case.

c. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements "clearly effect a waiver of the employee's right to act in concert with other employees for their mutual aid or protection." (*Compare* Order at 34, with Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor

Relations Act, is contrary to Board and/or court precedent, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

9. RENFROE excepts to the ALJ's finding or conclusion that employees reasonably would have concluded that the arbitration agreements preclude employees from filing unfair labor practice charges with the Board. (*Compare* Order at 34–36, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

a. RENFROE excepts to the ALJ's finding or conclusion that the "Intent," "Mandatory Arbitration," and "Covered Claims" provisions of the arbitration agreements "clearly encompass filing an unfair labor practice charge with the Board." (*Compare* Order at 34–35, *with* Jt. Exs. 2, 3 & 5 at ¶¶ 1–3.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

b. RENFROE excepts to the ALJ's finding or conclusion that "an employee reasonably would believe that the agreement covered unfair labor practice charges." (*Compare* Order at 35, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

c. RENFROE excepts to the ALJ's finding or conclusion that "an employee reasonably would believe that arbitration was the exclusive means of resolving claims." (*Compare* Order at 35, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

d. RENFROE excepts to the ALJ's finding or conclusion that "an employee reading the agreement would believe not only that if he wished to complain about the conditions of employment he had to use arbitration, but also that he could only use arbitration." (*Compare* Order at 35, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

e. RENFROE excepts to the ALJ's finding or conclusion that the arbitration agreements "prohibit[s] an activity which the Act protects, filing charges with the Board." (*Compare* Order at 36, *with* Jt. Exs. 2, 3 & 5.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

f. RENFROE excepts to the ALJ's finding or conclusion that "requiring employees to sign the [arbitration] agreement interferes with their exercise of protected rights and thereby violates Section 8(a)(1) of the Act." (*See* Order at 36.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable

construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

g. RENFROE excepts to the ALJ's finding or conclusion that "Respondent violated Section 8(a)(1) of the Act during the time period [sic] February 17, 2016 through March 29, 2016." (*See* Order at 36.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

h. RENFROE excepts to the ALJ's finding or conclusion that RENFROE engaged in any "unfair labor practice." (*Compare* Order at 36, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

10. RENFROE excepts to the ALJ's finding or conclusion that RENFROE violated Section 8(a)(1) by terminating Adams' employment. (*Compare* Order at 36–37, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act,.

a. RENFROE excepts to the ALJ's finding or conclusion that "Adams was engaging in protected concerted activity when she refused to sign the document." (*Compare* Order at 37, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record

evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

b. RENFROE excepts to the ALJ's finding or conclusion that "Respondent removed Adams from her work assignment and refused to assign her further work because she engaged in the protected activity of refusing to sign the waiver." (*Compare* Order at 37, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

c. RENFROE excepts to the ALJ's finding or conclusion that "Respondent caused Adams' employment to be terminated as of February 24, 2016, as alleged in complaint paragraph 5(b)." (*Compare* Order at 37, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

d. RENFROE excepts to the ALJ's finding or conclusion that "Respondent took this action because Adams had engaged in protected concerted activities and to discourage other employees from engaging in such activities, as alleged in complaint paragraph 5(c)." (*Compare* Order at 37, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the



arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

e. RENFROE excepts to the ALJ's finding or conclusion that "this action violated Section 8(a)(1) of the Act, as alleged in complaint paragraph 6." (*Compare* Order at 37, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

f. RENFROE excepts to the ALJ's finding or conclusion that RENFROE engaged in any "unfair labor practice." (*Compare* Order at 37, *with* Jt. Exs. 1–7.) The ALJ's finding or conclusion is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and contrary to the Federal Arbitration Act.

11. RENFROE excepts to the ALJ's proposed "Remedy." (*Compare* Order at 37, *with* Jt. Exs. 1–7.) The ALJ's "Remedy" is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, contrary to the Federal Arbitration Act, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

a. RENFROE excepts to the ALJ's requirement that RENFROE post to its employees the notice attached to the Order as Appendix A. (*Compare* Order at 37, *with* Jt. Exs. 1–7.) The ALJ's "Remedy" is unsupported by the record evidence, is based on an

unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, contrary to the Federal Arbitration Act, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

b. RENFROE excepts to the ALJ's requirement that RENFROE "send signed copies of the notice to each client at which the Respondent's employees perform work and request that the client post the notice." (*Compare* Order at 38, *with* Jt. Exs. 1–7.) The ALJ's "Remedy" is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, contrary to the Federal Arbitration Act, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

c. RENFROE excepts to the ALJ's requirement that RENFROE "must reinstate [Adams] and make her whole, with interest, for all losses she suffered because of the Respondent's unfair labor practices." (*Compare* Order at 38, *with* Jt. Exs. 1–7.) The ALJ's "Remedy" is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, and is contrary to the Federal Arbitration Act.

d. RENFROE excepts to the ALJ's requirement that RENFROE "must revise its arbitration agreement to exclude all language whereby the signer waived the right to engage in protected, concerted activities and notify all employees who signed such agreements that those waivers have been rescinded and will not be enforced." (*Compare*

Order at 38, *with* Jt. Exs. 1–7.) The ALJ's "Remedy" is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, contrary to the Federal Arbitration Act, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

e. RENFROE excepts to the ALJ's requirement that RENFROE "maintain in effect the grievance arbitration procedure which it established and to which it agreed, but with the unlawful terms excised." (*Compare* Order at 38, *with* Jt. Exs. 1–7.) The ALJ's "Remedy" is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, contrary to the Federal Arbitration Act, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

12. RENFROE excepts to the ALJ's second, third, and fourth conclusions of law. (*See* Order at 39.) The ALJ's conclusions of law are unsupported by the record evidence, are based on an unreasonable construction of the arbitration agreements, are contrary to the National Labor Relations Act, are contrary to Board and/or court precedent, contrary to the Federal Arbitration Act, exceed the General Counsel's theory of the case, exceed the Board's interpretive and remedial powers, and deny RENFROE its due-process rights.

13. RENFROE excepts to the ALJ's recommended Order. (*See* Order at 39–41.) The ALJ's recommended Order is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is

contrary to Board and/or court precedent, contrary to the Federal Arbitration Act, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

14. RENFROE excepts to Appendix A to the ALJ's "NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD AN AGENCY OF THE UNITED STATES GOVERNMENT." (*See* Order, App. A.) The ALJ's Appendix A is unsupported by the record evidence, is based on an unreasonable construction of the arbitration agreements, is contrary to the National Labor Relations Act, is contrary to Board and/or court precedent, contrary to the Federal Arbitration Act, exceeds the General Counsel's theory of the case, exceeds the Board's interpretive and remedial powers, and denies RENFROE its due-process rights.

### **CONCLUSION**

Based on the foregoing, and as set forth in more detail in RENFROE's concurrently filed Brief in Support of Respondent E. A. Renfroe's & Company, Inc.'s Exceptions, the ALJ should be reversed and the Complaint should be dismissed. At a minimum, the Board should remand for additional proceedings to preserve RENFROE's due process rights.

*s/ K. Bryance Metheny*

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**CERTIFICATE OF SERVICE**

I certify that on October 5, 2016, a copy of the foregoing document was filed with NLRB Executive Secretary via the National Labor Relations Board's electronic filing system, and served a copy of the foregoing by electronic mail upon the following:

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